

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

VICTOR HUGO GONZALES,

Defendant and Judgment Debtor.

PCL INDUSTRIAL SERVICES, INC.

Garnishee.

Case No. 1:20-MC-00033-BAM

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS FOR
FINAL ORDER OF GARNISHMENT (WAGES)

(Doc. No. 10)

FOURTEEN (14) DAY DEADLINE

Currently pending before the Court is the United States' request for findings and recommendations regarding issuance of a final garnishment order (the "Application") against the nonexempt disposable wages of the defendant and judgment debtor, Victor Hugo Gonzales ("Defendant") from his employer, PCL Industrial Services, Inc. (the "Garnishee"). (Doc. No. 10.) The matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c)(7).

I. BACKGROUND

On August 23, 2019, pursuant to a plea agreement with the United States, Defendant entered a plea of guilty to one count of an indictment charging him with bank fraud in violation of 18 U.S.C. § 1344. (*United States v. Victor Hugo Gonzales*, Case No. 1:18-cr-00017-LJO-SKO-1, Doc. Nos. 1, 17-18.) On January 21, 2020, Defendant was sentenced to one day in custody, five years of supervised release, and ordered to pay a statutory assessment of \$100.00 and \$333,841.12 in restitution. (*Id.* at Doc. Nos. 24-25.) According to the United States, as of July 14, 2020, Defendant owes restitution in the amount of \$307,691.12. (Doc. No. 10 at 2.)

In an attempt to collect the restitution and special assessment owed, the United States filed an

1 application for a writ of continuing garnishment (wages) against Defendant’s disposable earnings from
 2 the Garnishee. (Doc. No. 1.) The Clerk of Court issued the writ on June 3, 2020. (Doc. No. 3.) The
 3 United States subsequently served the Garnishee and Defendant with copies of the writ and related
 4 documents. (Doc. Nos. 6, 8.) The documents served on Defendant advised him, among other things, of
 5 his rights to claim exemptions to garnishment and request a hearing on his claims, request a hearing to
 6 quash the writ, and/or object to the Garnishee’s answer of garnishee (the “Answer”) and request a
 7 hearing thereon. (Doc. No. 7.)

8 The Garnishee filed its acknowledgement of service and Answer on June 25, 2020, stating that
 9 the Defendant is an employee of the Garnishee and identifying the applicable pay period and amount of
 10 disposable earnings. (Doc. No. 9.) The Garnishee served the Answer on Defendant on June 17, 2020.
 11 (*Id.*) The United States now seeks a final order of garnishment pursuant to section 3205(c)(7) of the
 12 Federal Debt Collections Procedure Act (“FDCPA”), 28 U.S.C. §§ 3001, *et seq.*, against Defendant’s
 13 wages from the Garnishee. (Doc. No. 10.)

14 **II. DISCUSSION**

15 Pursuant to the Mandatory Victims Restitution Act, the United States may enforce a judgment
 16 imposing a fine, including restitution, in accordance with the practices and procedures for enforcing a
 17 civil judgment under the FDCPA. *United States v. Mays*, 430 F.3d 963, 965, n.2 (9th Cir. 2005). The
 18 FDCPA sets forth the “exclusive civil procedures for the United States . . . to recover a judgment on. . .
 19 an amount that is owing to the United States on account of . . . restitution.” *Id.* at 965.

20 The FDCPA permits the Court to “issue a writ of garnishment against property (including
 21 nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in
 22 the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment
 23 against the debtor.” 28 U.S.C. § 3205(a). “Disposable earnings” is defined as “that part of earnings
 24 remaining after all deductions required by law have been withheld.” 28 U.S.C. § 3002(5). “Nonexempt
 25 disposable earnings,” in turn, “means 25 percent of disposable earnings, subject to section 303 of the
 26 Consumer Credit Protection Act.” 28 U.S.C. § 3002(9). The principal restriction imposed by the
 27 Consumer Credit Protection Act is that garnishment of an individual’s disposable earnings is limited to
 28 twenty-five percent of the debtor’s weekly earnings. 15 U.S.C. § 1673(a)(1). Additionally, “the United

1 States is entitled to recover a surcharge of 10 percent of the amount of the debt in connection with the
2 recovery of the debt, to cover the cost of processing and handling the litigation and enforcement . . . of
3 the claim for such debt.” 28 U.S.C. § 3011(a).

4 The government is required by the FDCPA to provide the judgment debtor with notice of the
5 commencement of garnishment proceedings. 28 U.S.C. § 3202(b). The judgment debtor then has
6 twenty days after receipt of the notice to request a hearing. 28 U.S.C. § 3202(b). After the garnishee
7 files an answer, and if no hearing is requested within the required time period, the Court must promptly
8 enter an order directing the garnishee as to the disposition of the judgment debtor’s property. 28 U.S.C.
9 § 3205(c)(7).

10 Here, Defendant’s nonexempt disposable earnings are subject to garnishment under the FDCPA.
11 See 28 U.S.C. § 3205(a). The United States provided Defendant with notice of the garnishment
12 proceedings on June 8, 2020. (Doc. No. 8.) The documents served on Defendant advised him of his
13 rights to claim exemptions and request a hearing on his claims, request a hearing to oppose the writ, and
14 object to the Answer and request a hearing. (Doc. No. 7.) Defendant was further advised of the
15 applicable deadlines for exercising these rights under the FDCPA. (*Id.*) Neither Defendant nor any
16 other person filed any exemption claims, objections, requests for hearing, or other response in this
17 garnishment action and their time to do so has now expired. Pursuant to 28 U.S.C. § 3205(c)(7), as no
18 hearing was requested during the applicable time period, the Court will recommend that an order issue
19 directing the Garnishee as to the disposition of Defendant’s nonexempt disposable wages.

20 The United States also seeks to recover the ten percent (10%) litigation surcharge of the
21 judgment amount balance as authorized by 28 U.S.C. § 3011(a). (Doc. No. 10.) The FDCPA provides
22 that the United States is entitled to recover a litigation surcharge in connection with the recovery of a
23 debt. 28 U.S.C. § 3011(a). A defendant’s criminal monetary penalties, including the assessment, fine,
24 and restitution, all constitute “debt” as defined by the FDCPA. 28 U.S.C. § 3002(3)(B). The debt
25 recovery action must be one that arises under the FDCPA’s pre-judgment remedies or post-judgment
26 remedies. 28 U.S.C. § 3011(a); *United States v. Sackett*, 114 F.3d 1050, 1053 (10th Cir. 1997). The
27 government’s garnishment action here is a qualifying post-judgment remedy under 28 U.S.C. § 3205.
28 Subject to exclusions not relevant here, section 3011 provides that the recoverable surcharge amount is

1 10% of the debt sought to be collected. 28 U.S.C. § 3011(a).

2 The United States is entitled to a surcharge on the amount of the debt sought to be collected. As
3 of July 14, 2020, Defendant owes restitution in the amount of \$307,691.12 and United States seeks a
4 surcharge in the amount of \$30,769.11, representing 10% of the restitution amount owed. (Doc. No. 10.)
5 The Court will therefore recommend that the requested surcharge be awarded.

6 **III. ORDER AND RECOMMENDATIONS**

7 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District
8 Judge to this action.

9 It is HEREBY ORDERED that the United States is directed to serve a copy of these findings and
10 recommendations on Defendant and the Garnishee and file proof of such service within seven (7) days
11 of entry of these findings and recommendations.

12 Further, based on the foregoing, IT IS HEREBY RECOMMENDED that:

13 1. The United States' Request for Findings and Recommendations for Final Order of
14 Garnishment be GRANTED;

15 2. Garnishee PCL Industrial Services, Inc. be directed to pay the Clerk of the United States
16 District Court twenty-five percent (25%) of Victor Hugo Gonzales's ongoing and non-exempt disposable
17 wages, earnings, commissions, and bonuses;

18 3. Garnishee PCL Industrial Services, Inc. be directed to pay the Clerk of the United States
19 District Court the amount of non-exempt disposable wages, earnings, commissions, and bonuses already
20 withheld as a result of the writ, within fifteen (15) days of the filing of an order adopting these Findings
21 and Recommendations;

22 4. Garnishee PCL Industrial Services, Inc. be directed to make payment in the form of a
23 cashier's check, money order or company draft, made payable to the Clerk of the Court and delivered to
24 the United States District Court, Eastern District of California, 501 I Street, Room 4-200, Sacramento,
25 California 95814. The criminal docket number (1:18-CR-00017-LJO-SKO) shall be stated on the payment
26 instrument;

27 5. The United States be entitled to recover a \$30,769.11 litigation surcharge after satisfaction
28 of the judgment in the criminal case denominated as *United States v. Angelita Leon.*, Case No. 1:09-CR-

00006-LJO-SKO, and Garnishee PCL Industrial Services, Inc. be directed to garnish \$30,769.11 of Victor Hugo Gonzales's wages, representing the litigation surcharge, once the judgment balance of \$307,691.12 is satisfied;

6. Garnishee PCL Industrial Services, Inc. be directed to pay the litigation surcharge to the United States Department of Justice via a single payment within twenty (20) days of the garnished wages accumulating to the \$30,769.11 surcharge amount by delivering a cashier's check, money order, or company draft in the sum of \$30,769.11 made payable to the "United States Department of Justice" and mailed overnight to the U.S. Bank Government Lockbox, Attn: DOJ Production Manager/Box 790363, 1005 Convention Plaza, SL-MO-C2G1, St. Louis, MO 63101. The check, money order, or company draft shall state "CDCS Number 2020A25595" on the face of the payment instrument;

7. The Court retain jurisdiction to resolve matters through ancillary proceedings in the case, if necessary; and

8. The garnishment terminate when (1) the United States seeks to terminate the writ; or (2) when the judgment and litigation surcharge are fully satisfied.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, any party may file written objections with the Court and serve a copy on all parties. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file objections within the specified time may result in the waiver of the "right to challenge the magistrate's factual findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: August 4, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE